IN THE HIGH COURT OF DELHI

FAO No. 83/2005

Sh. Sardari Lal ..... Appellant
! through: Mr. Rajan Sabharwal and Ms. Seema Bhadauriya, Advocates

VERSUS

$ Sh. Harish Chander Sharma & Anr..... Respondents
^ through: Mr. Puneet Taneja, Advocate

% DATE OF DECISION: 14.11.2007

CORAM:

* **Hon'ble Mr.Justice Pradeep Nandrajog**

1. Whether reporters of local papers may be allowed to see the judgment? Y

2. To be referred to the Reporter or not? Y

3. Whether judgment should be reported in Digest? Y

: **PRADEEP NANDRAJOG, J.**(Oral)
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1. I shall be referring to the appellant as the plaintiff. I shall be referring to the respondent as the defendant.

2. Plaintiff is aggrieved by an order dated 16.3.2005 dismissing his application under Order 39 Rule 1 and 2 CPC praying that pending adjudication of the suit filed by the plaintiff seeking relief of specific performance of an agreement to sell dated 24.7.2002, defendant be injuncted from transferring,

alienating, parting with possession or creating third party rights in the suit property.

3. The suit in question was filed on 22.12.2004.

4. The agreement to sell relied upon records that the seller who was the owner of plot No.296-A, Majlis Park admeasuring approximately 80 sq.yds. had agreed to sell the same to the plaintiff for the sale consideration of Rs.16 lacs out of which Rs.2 lacs in cash were being received at the time of execution of the agreement to sell and that balance sum would be paid within 30 days when purchaser would get executed the requisite sale documents before the Sub Registrar, Delhi.

5. The defendant opposed the suit by filing a written statement. Inter alia, it was highlighted in the written statement that on 28.8.2002 plaintiff had caused to be served upon the defendant a lawyer's notice calling upon the defendant to comply with the agreement to sell. The notice was duly replied to on 21.9.2002 denying the existence of any agreement to sell. It was further pointed out that it was unbelievable that the defendants would execute any such agreement. Reason for said plea was that the parties were involved in a continuous litigation since 1997. That defendant had a grievance against the plaintiff of having encroached upon adjoining public land

and using the same for running an eatery. A writ petition bearing No.2040/1997 filed in this court was referred to as being the one evidencing past litigation. Orders passed by this Court in the said writ petition on 16.2.2000 were relied upon which contained a direction to the MCD to remove the encroachments from the public land made by the plaintiff. It was additionally pointed out that the defendant and his father had been making complaints to the police against plaintiff on 23.1.1998, 3.5.2001, 8.5.2001, 28.5.2001 and as late as on 27.8.2002. It was further pleaded that as recorded in the agreement to sell the same was purportedly a result of intervention of a property dealer M/s.Kapoor & Company who ostensibly acted as a broker. It was pointed out that Mr.Kapoor, a property dealer was also carrying on business of running a chit under the name and style M/s.Kapoor Sunny Pvt. Ltd. It was stated that Mr.Kapoor had connived with the plaintiff to fabricate a false document. Lastly it was pleaded that the total area of plot bearing No.296-A, Majlis Park is 182 sq.yds. The same was valued at more than Rs.1.8 crores. It was unbelievable that 80 sq.yds. thereof would be sold for a meagre sum of Rs.16 lacs.

6. Considering the rival versions and declining interim

injunction, the learned Trial Judge has noted 4 features. Firstly

that the plot in question admeasures 182 sq.yds. the agreement to sell records the same to be only 80 sq.yds. Secondly, the past litigation between the parties and police complaints right up to 27.8.2002 made it suspect that the defendant would have entered into the agreement to sell. Thirdly, the probability of Mr.Kapoor conniving in creation of the documents was found to be a probable plea. Lastly, delay in institution of the suit was noted.

7. The result was that the injunction as prayed for has been denied.

8. From the pleadings of the parties and facts noted herein above view taken by the learned Trial Judge cannot be faulted with. It is settled law that if on a given material 2 views are possible and the Trial Court adopts 1 out of the 2 views the Appellate Court would not interdict the order merely because another view is probable.

9. Adding on to what has weighed with the learned Trial Judge I may note that the plot in question admittedly measures 182 sq.yds. What part thereof admeasuring 80 sq.yds. was agreed to be sold is not mentioned in the

agreement to sell. I wonder, which 80 sq.yds. of land could be put under the Court injunction from out of 182 sq.yds. of land?

10. As noted herein above the sale deed had to be executed as recorded in the agreement to sell within 30 days thereof. In this connection delay in filing the suit assumes importance and the importance get further fortified when one considers that on 28.8.2002 plaintiff had caused a legal notice to be served upon the defendant calling upon the defendant to execute the sale deed pursuant to the agreement to sell in question. On 21.9.2002 the defendant categorically denied having executed any agreement to sell. In spite thereof, the plaintiff waited till 22.12.2004 to file the suit. Certainly, delay defeats equity.

11. I find no merits in the appeal. The same is dismissed.

12. LCR be returned.

13. No costs.

November 14, 2007 **PRADEEP NANDRAJOG, J.**
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